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QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Letter dated 20 February 1997 from the Permanent Representative of Israel to the United Nations Office at Geneva addressed to the secretariat of the fifty-third session of the Commission on Human Rights

In the light of various publications in the media and elsewhere concerning Israel's interrogation policies and practices, I should be grateful if you could arrange to have the attached paper* on the subject (prepared by the Ministry of Justice) distributed as an official document of the fifty-third session of the Commission on Human Rights, before its opening on 10 March 1997.

(signed) Yosef Lamdan
Ambassador
Permanent Representative

* The annex is reproduced in the language of submission only.

Annex

MINISTRY OF JUSTICE
JERUSALEM, ISRAEL
February 1997

ISRAEL'S INTERROGATION POLICIES AND PRACTICES

Summary

In November 1996, the Supreme Court of Israel handed down a decision which cancelled an interim injunction ordering the General Security Service (GSS) to abstain from the use of any physical pressure during the interrogation of a detainee. This decision was the subject of controversy and was given an utterly distorted interpretation in the world media. Thus, it is necessary to clarify Israel's interrogation policies and practices and in particular the Supreme Court's recent decision.

Israeli law strictly forbids all forms of torture or maltreatment. The Israeli Penal Code (1997) prohibits the use of force or violence against a person for the purpose of extorting from him a confession to an offence or information relating to an offence. Moreover, Israel has signed and ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Israel also has a responsibility to protect the lives of both Jews and Arabs from terrorist organizations active throughout the world. To prevent terrorism effectively while ensuring that the basic human rights of even the most dangerous of criminals are protected, the Israeli authorities have adopted strict rules for the handling of interrogations. These guidelines are designed to enable investigators to obtain crucial information on terrorist activities or organizations from suspects who, for obvious reasons, would not volunteer information on their activities, while ensuring that the suspects are not maltreated.

As a result of GSS investigations or terrorist organization activists during the last two years, some 90 planned terrorist attacks have been foiled. Among these planned attacks were some 10 potential suicide bombings; 7 car-bombings; 15 kidnappings of soldiers and civilians; and some 60 attacks of different types, including the shooting of soldiers and civilians, hijacking of buses, stabbing and murder of ordinary Israelis and the placing of explosives.

The Landau Commission

The basic guidelines on interrogation were set by the Landau Commission of Inquiry. The Commission, headed by former Supreme Court President, Justice Moshe Landau, was appointed following a decision of the Israeli Government in 1987 to examine the GSS methods of interrogation of terrorist suspects. In order to compile its recommendations, the Landau Commission

examined international human rights law standards, existing Israeli legislation prohibiting torture and maltreatment, and guidelines in other democracies confronted with the threat of terrorism.

The Commission determined that in dealing with dangerous terrorists who represent a grave threat to the State of Israel and its citizens, the use of a moderate degree of pressure, including physical pressure, to obtain crucial information is unavoidable under certain circumstances. Such circumstances include situations in which information sought from a detainee believed to be personally involved in serious terrorist activities, can prevent imminent murder, or where the detainee possesses vital information on a terrorist organization which cannot be uncovered from any other source (for example, locations of arms or explosives-caches, or planned acts of terrorism).

The Landau Commission recognized the danger posed to the democratic values of the State of Israel should its agents abuse their power by using unnecessary or unduly harsh forms of pressure. As a result, the Commission recommended that psychological forms of pressure be used predominantly and that only "moderate physical pressure" (also used in other democratic countries) be sanctioned in limited cases where the degree of anticipated danger is considerable.

The use of such moderate pressure is in accordance with international law. For example, when asked to examine certain methods of interrogation used by Northern Ireland police against Irish Republican Army (IRA) terrorists, the European Court of Human Rights ruled that "ill-treatment must reach a certain severe level in order to be included in the ban [on torture and cruel, inhuman or degrading punishment] contained in Article 3 [of the European Convention on Human Rights]."

The Landau Commission was aware that the issue of moderate pressure during interrogation is both a serious and sensitive one. Hence, the guidelines regarding interrogation provide for limited forms of pressure under very specific circumstances, to be determined on a case-by-case basis. They by no means authorize the indiscriminate use of force. Rather, specific circumstances have been specified and interrogation practices have been strictly defined in a manner that, in the opinion of the Landau Commission, "if these boundaries are maintained exactly in letter and in spirit, the effectiveness of the interrogation will be assured, while at the same time it will be far from the use of physical or mental torture, maltreatment of the person being interrogated, or the degradation of his human dignity".

Safeguards

The Israeli Government recognized the importance of establishing safeguards and a system of review of interrogation practices in order to ensure that GSS investigators do not violate the guidelines. Investigation of claims of maltreatment is carried out by the Division for the Investigation of Police Misconduct in the Ministry of Justice under the direct supervision of the State Attorney.

On the individual level, Israel has a unique procedure for the judicial review of complaints of alleged maltreatment or torture, namely, the Supreme Court of Israel sitting as a High Court of Justice. Anyone who believes he has been wronged - whether a citizen of Israel or someone merely under the jurisdiction of the Israeli authorities - can petition directly to the Supreme Court sitting as a High Court of Justice. Such a petition will be brought before a judge within 48 hours from the time of its submission.

In addition, an agreement between the State of Israel and the International Committee of the Red Cross (ICRC) provides for the monitoring of conditions of detention. Delegates from the ICRC are permitted to meet with detainees in private within 14 days of arrest. ICRC doctors may examine detainees who complain of improper treatment. All complaints made by the ICRC regarding treatment of prisoners are fully investigated by the relevant Israeli authorities and the findings are made known to the ICRC.

Review

As recommended by the Landau Commission, a special ministerial committee headed by the Prime Minister was established in 1988 to review periodically the interrogation guidelines themselves. On 22 April 1993, the ministerial committee determined that certain changes should be made in the GSS guidelines. On the basis of the committee's recommendations, new guidelines were issue to GSS investigators. The new guidelines clearly stipulate that the need and justification for the use of limited pressure by investigators must be established in every case, according to its own special circumstances. The guidelines point out that the use of exceptional methods was intended only for situations where vital information is being concealed and not in order to humiliate, harm or mistreat those under investigation. In addition, it is expressly prohibited to deny a person under investigation food or drink, to refuse him permission to use a bathroom, or to subject him to extreme temperatures. Since then the guidelines have been revised from time to time, including last year, in the light of conclusions drawn from recent experience.

It should be noted that these guidelines are reviewed against a background of escalating terror. The years since the signing of the Oslo Agreement in 1993 have been the bloodiest since the establishment of the State of Israel in 1948. During this period, Palestinian terrorist groups, such as Hamas and Islamic Jihad, have planned and perpetrated numerous violent attacks which have resulted in the death or injury of hundreds of innocent victims. The spate of suicide bombings on buses and in public places, especially in the spring of 1996, designed to terrorize the local population made it imperative that the defence and security services work as effectively as possible to prevent further terrorist attacks and ensure the security of the population.

* * *

Within the last year a number of petitions have been submitted to the Supreme Court of Israel sitting as the High Court of Justice demanding that the Court issue an injunction forbidding the GSS from using any force throughout their investigations. The Court's decisions have dealt with the guidelines and their implementation on a case-by-case basis. Two cases of particular significance are worth mentioning.

In December 1995, the High Court of Justice issued an interim injunction on the basis of a petition brought by Abd al-Halim Belbaysi against the GSS to abstain from the use of physical pressure against the petitioner during his interrogation. At the request of the GSS, this interim order was cancelled after the petitioner who had earlier signed a written declaration denying any connection on his part to any illegal activity, admitted that he had planned the terrorist attack at Beit Lid on 22 January 1995 in which two suicide bombers blew themselves up and killed 21 Israelis, injuring numerous others. Belbaysi confessed that three bombs had been prepared at his home, that he himself had hidden the bombs in the vicinity of Beit Lid and that on the day of the attack he had handed over two bombs to the two suicide bombers and had driven them to the site of the attack.

Belbaysi also provided information which enabled the authorities to retrieve the third bomb, containing 15 kg of explosives, from its hiding place. During the investigation it also became apparent that Belbaysi had additional information regarding serious terrorist attacks in Israel planned for the near future. In order to uncover this essential information, the GSS appealed to the Court asking it to cancel the injunction.

The Court accepted the argument of the GSS attorney that disclosure of this information by Belbaysi could save human lives. In the light of this, the Court cancelled the interim injunction. At the same time, the Court emphasized the importance of adhering to the rule of law. "It is clear that the cancellation of the interim order should not be seen as permission for the investigators to use measures which are not compatible with the law and the relevant guidelines."

In a more recent case, that of Muhammed Hamdan, the High Court again cancelled an interim injunction which had been issued against the GSS, following a petition by Hamdan, to abstain from the use of any physical pressure throughout his interrogation. This interim injunction was issued with the agreement of the GSS, which informed the Court that at this stage of the investigation, they did not intend to use any physical pressure against the petitioner. However, within 24 hours, as a result of new inquiries and additional information regarding the petitioner, the GSS applied to the Court for the cancellation of this interim injunction. It should be noted that Hamdan had previously been detained in 1992, at which time he admitted that he belonged to and was active in the Islamic Jihad cells. At that time he was included in the group of Islamic Jihad and Hamas activists who were deported to Lebanon. Upon his return, Hamdan was sentenced to three additional months of imprisonment, which he completed at the end of February 1994.

In July 1995, he was placed under administrative detention for one month, and in March 1996 he was arrested by the Palestinian Authority together with a number of activists in extreme terrorist organizations. He was released in August 1996. In October 1996, the GSS received information which raised concrete suspicions that Hamdan had in his possession extremely vital information, the disclosure of which would help save human lives and prevent serious terrorist attacks in Israel, of which there was a real fear of their occurrence in the near future.

The conclusion was therefore reached that there was a vital need to immediately continue with the interrogation. It was at this point that the GSS petitioned the Supreme Court to cancel the interim injunction, as it was considered essential to waive its limitations in order to be able to induce Hamdan to disclose information that could prevent danger to many human lives. The attorney for the GSS emphasized that "the use of such moderate pressure in the present circumstances is allowed by law". He also indicated that the physical measures which the GSS wished to use did not amount to "torture" as defined in the Convention against Torture, and that each of these measures falls under the legal defence of "necessity", as specified in section 34(11) of the Penal Law, the conditions of which applied in the present case.

In the light of classified information presented to the Court by the GSS, the Court cancelled the interim injunction, stating: "After reviewing the classified material presented to us, we are satisfied that the Respondent does indeed have in his possession information on which a clear suspicion can be based that the Petitioner possesses extremely vital information, the immediate disclosure of which will prevent most serious attacks. Under these circumstances, we are of the opinion that there is no justification to continue with the interim injunction. Needless to say, the cancellation of the interim injunction is not tantamount to permission to use interrogation methods against the Petitioner which are contrary to the law."